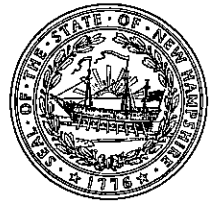




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 10, 2009

The Honorable Judith T. Spang, Chair
Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, New Hampshire 03301

RE: HB 502, modifying the definition of a "dam"

Dear Chairman Spang:

Thank you for the opportunity to comment on HB 502, which amends RSA 482:2, II(a) to change the definition of a dam in order to exclude certain ponds and small dams from the requirements to pay dam registration fees.

RSA 482:2 II (a) defines a dam as any artificial barrier that is four feet high or higher or stores two acre-feet or more of water. An acre-foot of water is the volume of water covering an acre to a depth of one foot. This is equal to 43,560 cubic feet or approximately 326,000 gallons of water. The bill would increase the minimum height criterion from four feet to six feet, and would eliminate storage capacity as a criterion. However, artificial barriers at the outlets of great ponds and artificial barriers which create surface impoundments for liquid industrial or liquid commercial wastes, septage, or sewage would continue to be considered dams under the jurisdiction of New Hampshire's Dam Safety Program, regardless of height or storage capacity.

The proposed change in the definition of a dam would make New Hampshire's definition more consistent with the national standard. Under the National Dam Safety Act of 2006, barriers less than six feet in height are excluded from the definition of a dam, regardless of storage capacity. The basis for this standard is that dams less than six feet in height are not likely to pose a threat to human life or downstream property if they were to fail. Most states have adopted this standard, or a standard even higher, in defining jurisdictional dams.

Under New Hampshire's current definition, there are 3,076 dams in the state. Of these, 110 dams are classified as High Hazard Dams, the failure of which would cause loss of life downstream; 184 are classified as Significant Hazard Dams, the failure of which would cause significant property damage downstream; and 546 are classified as Low Hazard Dams, the failure of which would cause low economic loss to structures or property downstream such as a town or city road. The remaining 2,236 dams are classified by Department of Environmental Services as non-menace dams. Because of the small size of these dams and the lack of development downstream, the failure or misoperation of these dams would not cause loss of life or property damage downstream.

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

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Under the definition proposed by the bill, a total of 478 dams, which are currently under the jurisdiction of New Hampshire's Dam Safety Program, would be exempt. Four hundred and seventy of these dams are currently classified as non-menace dams. The remaining eight are classified as Low Hazard Dams because failure of any of them could cause damage to a town road, either because the town road is over the crest of the dam or is located immediately downstream. If the legislature wishes to enact this bill but continue to keep these eight existing Low Hazard Dams under the jurisdiction of New Hampshire's Dam Safety program, this can be accomplished by adding the words "or pose a risk to public safety or property downstream" after the word "sewage," in the last line of RSA 482:2 II(a).

As stated in the analysis section of the proposed bill, its purpose is to exclude certain ponds and small dams from the requirement to pay dam registration fees. The bill would primarily apply to non-menace dams, which are not subject to an Annual Dam Registration Fee. However, new non-menace dams that are greater than four feet in height or higher or store two acre-feet or more of water are subject to a one-time dam registration and permit fee of \$2,000 to cover the cost of reviewing the permit for construction. Non-menace dams of this same size, which were constructed without a permit and have never been registered under New Hampshire's Dam Safety Program, are also subject to this one-time fee once they are discovered. The bill would exclude non-menace dams from this fee unless they were six feet high or higher.

Low Hazard Dams are subject to a one-time permit and registration fee of \$3,000 to cover the cost of registering and permitting the structures. In addition, Low Hazard Dams are subject to an Annual Dam Registration Fee of \$400 per year to cover the cost of inspecting these structures once every five years. If the eight existing Low Hazard Dams that are less than six feet in height were to be exempted from the program as currently proposed under the bill, this would result in a loss of \$3,200 annually in revenue to New Hampshire's Dam Safety Program. However, the program would no longer have the expense of inspecting these structures.

Thank you for this opportunity to comment on this bill. Please call either me at 271-2958 or Jim Gallagher at 271-1961, if you have any questions or need additional information.

Very truly yours,



Thomas S. Burack
Commissioner

cc: Representative Peyton Hinkle